

AMENDED IN ASSEMBLY AUGUST 12, 2004

AMENDED IN ASSEMBLY AUGUST 4, 2004

AMENDED IN ASSEMBLY JUNE 30, 2004

AMENDED IN ASSEMBLY JUNE 21, 2004

AMENDED IN ASSEMBLY JUNE 17, 2004

AMENDED IN SENATE MAY 11, 2004

AMENDED IN SENATE APRIL 29, 2004

AMENDED IN SENATE APRIL 26, 2004

## **SENATE BILL**

**No. 1682**

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**Introduced by Senators Ducheny and Speier**  
**(Principal coauthor: Senator Oller)**  
**(Coauthors: Senators Dunn and Sher)**  
(Coauthors: Assembly Members Kehoe and Steinberg)

February 20, 2004

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An act to amend Sections 1353.6, 1363, 1365.1, 1365.2, and 1367.1 of, to add Section 1367.4 to, and to repeal Section 1366.3 of, the Civil Code, and to amend Section 116.540 of, and to add Section 729.035 to, the Code of Civil Procedure, relating to common interest developments.

### LEGISLATIVE COUNSEL'S DIGEST

SB 1682, as amended, Ducheny. Common interest developments.

(1) Existing law defines and regulates common interest developments and prohibits the governing documents of a common interest development from prohibiting the displaying of certain

noncommercial signs, posters, flags, or banners, in an owner's separate interest, as specified.

This bill would extend the provisions described above to an owner's exclusive use common area.

(2) Existing law requires that members of a common interest development association have access to the association records, including accounting books and membership lists, as specified.

This bill would provide that, upon a court finding that a request to copy or inspect was unlawfully denied, a member is entitled to reasonable attorney's fees and court costs, and that the court may impose a civil penalty of up to \$500 per violation.

(3) Existing law requires the managing association of a common interest development to make the accounting books and records and the minutes of proceedings of the association available for inspection and copying by a member of the association, or the member's designated representative, as specified.

This bill would revise the provisions described above to have them apply to all association records, as defined, including contracts to which the association is or has been a party. The bill would also extend these provisions to community service organizations related to an association.

(4) Existing law defines and regulates common interest developments and authorizes the association that manages the development to levy assessments to fulfill its obligations. Existing law provides that a regular or special assessment of the association, late charges, reasonable costs of collection, and interest, as specified, are a debt of the owner of the separate interest at the time the assessment or other sums are levied, and are a lien on the owner's separate interest when the association records a specified document and follows a specified process. Existing law permits the association to enforce the lien in any manner permitted by law including a sale by a trustee, also known as nonjudicial foreclosure.

Existing law authorizes an owner of a separate interest in a common interest development to pay assessments that are in dispute in full under protest. Existing law, the right of redemption, permits a judgment debtor, as defined, to redeem his or her real property, as specified, after judicial foreclosure only if the decree of foreclosure finds that a deficiency judgment may be ordered against the debtor.

This bill would revise and recast the procedures for collecting delinquent assessments for certain debts that arise on and after January



1, 2005. The bill would provide that when an association of a common interest development seeks to collect a delinquent assessment of less than \$2,500, not including specified late charges and fees, the association must either file a civil action in small claims court or record a lien upon which it would be prohibited from foreclosing. The bill would repeal provisions authorizing the owner of a separate interest to pay assessments that are in dispute in full under protest and requiring the board of directors of an association to respond to an owner's written dispute of a debt within 15 days.

The bill would permit an association of a common interest development seeking to collect a delinquent regular or special assessment of \$2,500 or more, not including specified late charges and fees, to use foreclosure subject to specified conditions. Among these conditions, the bill would require the board of directors of an association to make the decision to record a lien against a separate interest or to foreclose upon a lien at an executive meeting of the board, by a majority vote, and to record the results of the vote, as specified, and would require the board to provide notice of the decision to foreclose, as specified.

The bill would require, if the owner so requests, that the association permit the owner of the separate interest to elect dispute resolution or alternative dispute resolution procedures, under specified circumstances, but only if AB 1836 of the 2003–04 Regular Session is enacted. The association would be prohibited from recording a lien or initiating a foreclosure action without participating in those procedures if so requested by the owner. The bill would further provide that, notwithstanding any law to the contrary, a foreclosure by an association to collect upon a debt for a delinquent assessment, as specified, is subject to a right of redemption. The bill would provide a redemption period of 90 days. The bill would establish a minimum bid of ~~90 percent~~ 65% of the appraised value, exclusive of senior liens, as specified, in a judicial or nonjudicial foreclosure to collect upon a debt for a delinquent assessment, as specified. The bill would exempt from its provisions developers and separate interest owners in timeshare projects, as specified.

The bill would also authorize a homeowner's association to appear and participate in small claims court hearings through a management company representative or bookkeeper who appears on behalf of the homeowner's association.



(5) This bill would incorporate additional changes in Sections 1365.1 and 1367.1 of the Civil Code *proposed by AB 2252 and changes consistent with AB 1836 that would become operative only if ~~AB 1836 and this bill are both~~ either or both of these bills are* chaptered and become effective on or before January 1, 2005.

(6) The bill would further specify that it shall become operative only if AB 2598 is also enacted.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1353.6 of the Civil Code is amended to  
2 read:

3 1353.6. (a) The governing documents, including the  
4 operating rules, may not prohibit posting or displaying of  
5 noncommercial signs, posters, flags, or banners on or in an  
6 owner's separate interest or within the owner's exclusive use  
7 common area, as defined in Section 1351, except as required for  
8 the protection of public health or safety or if the posting or display  
9 would violate a local, state, or federal law.

10 (b) For purposes of this section, a noncommercial sign, poster,  
11 flag, or banner may be made of paper, cardboard, cloth, plastic, or  
12 fabric, and may be posted or displayed from the yard, window,  
13 door, balcony, or outside wall of the separate interest or the  
14 exclusive use common area, but may not be made of lights,  
15 roofing, siding, paving materials, flora, or balloons, or any other  
16 similar building, landscaping, or decorative component, or  
17 include the painting of architectural surfaces.

18 (c) An association may prohibit noncommercial signs and  
19 posters that are more than 9 square feet in size and noncommercial  
20 flags or banners that are more than 15 square feet in size.

21 SEC. 2. Section 1363 of the Civil Code is amended to read:

22 1363. (a) A common interest development shall be managed  
23 by an association which may be incorporated or unincorporated.  
24 The association may be referred to as a community association.

25 (b) An association, whether incorporated or unincorporated,  
26 shall prepare a budget pursuant to Section 1365 and disclose  
27 information, if requested, in accordance with Section 1368.



(c) Unless the governing documents provide otherwise, and regardless of whether the association is incorporated or unincorporated, the association may exercise the powers granted to a nonprofit mutual benefit corporation, as enumerated in Section 7140 of the Corporations Code, except that an unincorporated association may not adopt or use a corporate seal or issue membership certificates in accordance with Section 7313 of the Corporations Code.

The association, whether incorporated or unincorporated, may exercise the powers granted to an association by Section 383 of the Code of Civil Procedure and the powers granted to the association in this title.

(d) Meetings of the membership of the association shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedures the association may adopt.

(e) Notwithstanding any other provision of law, notice of meetings of the members shall specify those matters the board intends to present for action by the members, but, except as otherwise provided by law, any proper matter may be presented at the meeting for action.

(f) (1) Members of the association shall have access to association records, including accounting books and records and membership lists, in accordance with Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of the Corporations Code. The members of the association shall have the same access to the operating rules of the association as they have to the accounting books and records of the association.

(2) A member of the association may initiate a civil action to enforce his or her rights under this subdivision, and upon a finding that a request to copy or inspect was denied in violation of this subdivision, the member shall be entitled to reasonable attorney's fees and court costs, and the court may impose a civil penalty of up to five hundred dollars (\$500) per violation.

(g) If an association adopts or has adopted a policy imposing any monetary penalty, including any fee, on any association member for a violation of the governing documents or rules of the association, including any monetary penalty relating to the activities of a guest or invitee of a member, the board of directors shall adopt and distribute to each member, by personal delivery or

1 first-class mail, a schedule of the monetary penalties that may be  
2 assessed for those violations, which shall be in accordance with  
3 authorization for member discipline contained in the governing  
4 documents. The board of directors shall not be required to  
5 distribute any additional schedules of monetary penalties unless  
6 there are changes from the schedule that was adopted and  
7 distributed to the members pursuant to this subdivision.

8 (h) When the board of directors is to meet to consider or impose  
9 discipline upon a member, the board shall notify the member in  
10 writing, by either personal delivery or first-class mail, at least 10  
11 days prior to the meeting. The notification shall contain, at a  
12 minimum, the date, time, and place of the meeting, the nature of  
13 the alleged violation for which a member may be disciplined, and  
14 a statement that the member has a right to attend and may address  
15 the board at the meeting. The board of directors of the association  
16 shall meet in executive session if requested by the member being  
17 disciplined.

18 If the board imposes discipline on a member, the board shall  
19 provide the member a written notification of the disciplinary  
20 action, by either personal delivery or first-class mail, within 15  
21 days following the action. A disciplinary action shall not be  
22 effective against a member unless the board fulfills the  
23 requirements of this subdivision.

24 (i) Whenever two or more associations have consolidated any  
25 of their functions under a joint neighborhood association or similar  
26 organization, members of each participating association shall be  
27 entitled to attend all meetings of the joint association other than  
28 executive sessions, (1) shall be given reasonable opportunity for  
29 participation in those meetings and (2) shall be entitled to the same  
30 access to the joint association's records as they are to the  
31 participating association's records.

32 (j) Nothing in this section shall be construed to create, expand,  
33 or reduce the authority of the board of directors of an association  
34 to impose monetary penalties on an association member for a  
35 violation of the governing documents or rules of the association.

36 SEC. 3. Section 1365.1 of the Civil Code is amended to read:

37 1365.1. (a) The association shall distribute the written notice  
38 described in subdivision (b) to each member of the association  
39 during the 60-day period immediately preceding the beginning of  
40 the association's fiscal year. The notice shall be printed in at least

1 12-point type. An association distributing the notice to an owner  
2 of an interest that is described in Section 11003.5 of the Business  
3 and Professions Code may delete from the notice described in  
4 subdivision (b) the portion regarding meetings and payment plans.

5 (b) The notice required by this section shall read as follows:

6  
7 “NOTICE

8  
9 ASSESSMENTS AND FORECLOSURE

10  
11 This notice outlines some of the rights and responsibilities of  
12 owners of property in common interest developments and the  
13 associations that manage them. Please refer to the sections of the  
14 Civil Code indicated for further information. A portion of the  
15 information in this notice applies only to liens recorded on or after  
16 January 1, 2003. You may wish to consult a lawyer if you dispute  
17 an assessment.

18  
19 ASSESSMENTS AND FORECLOSURE

20  
21 Assessments become delinquent 15 days after they are due,  
22 unless the governing documents provide for a longer time. The  
23 failure to pay association assessments may result in the loss of an  
24 owner’s property through foreclosure. Foreclosure may occur  
25 either as a result of a court action, known as judicial foreclosure,  
26 or without court action, often referred to as nonjudicial  
27 foreclosure. For liens perfected on and after January 1, 2005, an  
28 association may not use judicial or nonjudicial foreclosure if the  
29 amount of the delinquent assessments or dues, exclusive of any  
30 late charges, fees, interest, and costs of collection, is less than two  
31 thousand five hundred dollars (\$2,500). For delinquent  
32 assessments or dues in excess of two thousand five hundred dollars  
33 (\$2,500), an association may use nonjudicial or judicial  
34 foreclosure subject to the conditions set forth in Section 1367.4 of  
35 the Civil Code. When using nonjudicial or judicial foreclosure, the  
36 association records a lien on the owner’s property. The owner’s  
37 property may be sold to satisfy the lien if the lien is not paid.  
38 (Sections 1366, 1367.1, and 1367.4 of the Civil Code)

39 In a nonjudicial or judicial foreclosure, the association may  
40 recover assessments, reasonable costs of collection, reasonable



1 attorney's fees, late charges, and interest. The association may not  
2 use nonjudicial or judicial foreclosure to collect fines or penalties,  
3 except for costs to repair common areas damaged by a member or  
4 a member's guests, if the governing documents provide for this.  
5 (Sections 1366 and 1367.1 of the Civil Code)

6 The association must comply with the requirements of Section  
7 1367.1 of the Civil Code when collecting delinquent assessments.  
8 If the association fails to follow these requirements, it may not  
9 record a lien on the owner's property until it has satisfied those  
10 requirements. Any additional costs that result from satisfying the  
11 requirements are the responsibility of the association. (Section  
12 1367.1 of the Civil Code)

13 At least 30 days prior to recording a lien on an owner's separate  
14 interest, the association must provide the owner of record with  
15 certain documents by certified mail. Among these documents, the  
16 association must send a description of its collection and lien  
17 enforcement procedures and the method of calculating the  
18 amount. It must also provide an itemized statement of the charges  
19 owed by the owner. An owner has a right to review the  
20 association's records to verify the debt. (Section 1367.1 of the  
21 Civil Code)

22 If a lien is recorded against an owner's property in error, the  
23 person who recorded the lien is required to record a lien release  
24 within 21 days, and to provide an owner certain documents in this  
25 regard. (Section 1367.1 of the Civil Code)

26 The collection practices of the association may be governed by  
27 state and federal laws regarding fair debt collection. Penalties can  
28 be imposed for debt collection practices that violate these laws.

## 30 PAYMENTS

31  
32 When an owner makes a payment, he or she may request a  
33 receipt, and the association is required to provide it. On the receipt,  
34 the association must indicate the date of payment and the person  
35 who received it. The association must inform owners of a mailing  
36 address for overnight payments. (Section 1367.1 of the Civil  
37 Code)

38 An owner is not liable for charges, interest, and costs of  
39 collection, if it is established that the assessment was paid properly  
40 on time. (Section 1367.1 of the Civil Code)



MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a time-share may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exist. (Section 1367.1 of the Civil Code)

The board of the directors must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment plans must conform with the payment plan standards of the association, if they exist. (Section 1367.1 of the Civil Code)”

SEC. 3.5. Section 1365.1 of the Civil Code is amended to read:

1365.1. (a) The association shall distribute the written notice described in subdivision (b) to each member of the association during the 60-day period immediately preceding the beginning of the association’s fiscal year. The notice shall be printed in at least 12-point type. An association distributing the notice to an owner of an interest that is described in Section 11003.5 of the Business and Professions Code may delete from the notice described in subdivision (b) the portion regarding meetings and payment plans.

(b) The notice required by this section shall read as follows:

“NOTICE

ASSESSMENTS AND FORECLOSURE

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

ASSESSMENTS AND FORECLOSURE

1 Assessments become delinquent 15 days after they are due,  
2 unless the governing documents provide for a longer time. The  
3 failure to pay association assessments may result in the loss of an  
4 owner's property through foreclosure. Foreclosure may occur  
5 either as a result of a court action, known as judicial foreclosure,  
6 or without court action, often referred to as nonjudicial  
7 foreclosure. For liens perfected on and after January 1, 2005, an  
8 association may not use judicial or nonjudicial foreclosure if the  
9 amount of the delinquent assessments or dues, exclusive of any  
10 late charges, fees, interest, and costs of collection, is less than two  
11 thousand five hundred dollars (\$2,500). For delinquent  
12 assessments or dues in excess of two thousand five hundred dollars  
13 (\$2,500), an association may use nonjudicial or judicial  
14 foreclosure subject to the conditions set forth in Section 1367.4 of  
15 the Civil Code. When using nonjudicial or judicial foreclosure, the  
16 association records a lien on the owner's property. The owner's  
17 property may be sold to satisfy the lien if the lien is not paid.  
18 (Sections 1366 , 1367.1, and 1367.4 of the Civil Code)

19 In a nonjudicial or judicial foreclosure, the association may  
20 recover assessments, reasonable costs of collection, reasonable  
21 attorney's fees, late charges, and interest. The association may not  
22 use nonjudicial or judicial foreclosure to collect fines or penalties,  
23 except for costs to repair common areas damaged by a member or  
24 a member's guests, if the governing documents provide for this;  
25 ~~nor may the association use nonjudicial or judicial foreclosure to~~  
26 ~~collect debts for delinquent assessments under two thousand five~~  
27 ~~hundred dollars (\$2,500), not including late charges and certain~~  
28 ~~fees.~~ (Sections 1366 and 1367.1 of the Civil Code)

29 The association must comply with the requirements of Section  
30 1367.1 of the Civil Code when collecting delinquent assessments.  
31 If the association fails to follow these requirements, it may not  
32 record a lien on the owner's property until it has satisfied those  
33 requirements. Any additional costs that result from satisfying the  
34 requirements are the responsibility of the association. (Section  
35 1367.1 of the Civil Code)

36 At least 30 days prior to recording a lien on an owner's separate  
37 interest, the association must provide the owner of record with  
38 certain documents by certified mail. Among these documents, the  
39 association must send a description of its collection and lien  
40 enforcement procedures and the method of calculating the

1 amount. It must also provide an itemized statement of the charges  
2 owed by the owner. An owner has a right to review the  
3 association's records to verify the debt. (Section 1367.1 of the  
4 Civil Code)

5 If a lien is recorded against an owner's property in error, the  
6 person who recorded the lien is required to record a lien release  
7 within 21 days, and to provide an owner certain documents in this  
8 regard. (Section 1367.1 of the Civil Code)

9 The collection practices of the association may be governed by  
10 state and federal laws regarding fair debt collection. Penalties can  
11 be imposed for debt collection practices that violate these laws.

#### 12 13 PAYMENTS 14

15 When an owner makes a payment, he or she may request a  
16 receipt, and the association is required to provide it. On the receipt,  
17 the association must indicate the date of payment and the person  
18 who received it. The association must inform owners of a mailing  
19 address for overnight payments. (Section 1367.1 of the Civil  
20 Code)

21 An owner may dispute an assessment debt by submitting a  
22 written request for dispute resolution to the association as set forth  
23 in Article 5 (commencing with Section 1368.810) of Chapter 4 of  
24 Title 6 of Division 2 of the Civil Code. In addition, an association  
25 may not record a lien or initiate a foreclosure without participating  
26 in alternative dispute resolution with a neutral third party as set  
27 forth in Article 2 (commencing with Section 1369.510) of Chapter  
28 7 of Title 6 of Division 2 of the Civil Code, if so requested by the  
29 owner.

30 An owner is not liable for charges, interest, and costs of  
31 collection, if it is established that the assessment was paid properly  
32 on time. (Section 1367.1 of the Civil Code)

#### 33 34 MEETINGS AND PAYMENT PLANS 35

36 An owner of a separate interest that is not a time-share may  
37 request the association to consider a payment plan to satisfy a  
38 delinquent assessment. The association must inform owners of the  
39 standards for payment plans, if any exist. (Section 1367.1 of the  
40 Civil Code)

1 The board of ~~the~~ directors must meet with an owner who makes  
2 a proper written request for a meeting to discuss a payment plan  
3 when the owner has received a notice of a delinquent assessment.  
4 These payment plans must conform with the payment plan  
5 standards of the association, if they exist. (Section 1367.1 of the  
6 Civil Code)”

7 *SEC. 3.6. Section 1365.1 of the Civil Code is amended to*  
8 *read:*

9 1365.1. (a) The association shall distribute the written notice  
10 described in subdivision (b) to each member of the association  
11 during the 60-day period immediately preceding the beginning of  
12 the association’s fiscal year. The notice shall be printed in at least  
13 12-point type. An association distributing the notice to an owner  
14 of an interest that is described in Section ~~11003.5~~ 11212 of the  
15 Business and Professions Code *that is not otherwise exempt from*  
16 *this section pursuant to subdivision (a) of Section 11211.7*, may  
17 delete from the notice described in subdivision (b) the portion  
18 regarding meetings and payment plans.

19 (b) The notice required by this section shall read as follows:

20  
21 “NOTICE

22  
23 ASSESSMENTS AND FORECLOSURE

24  
25 This notice outlines some of the rights and responsibilities of  
26 owners of property in common interest developments and the  
27 associations that manage them. Please refer to the sections of the  
28 Civil Code indicated for further information. A portion of the  
29 information in this notice applies only to liens recorded on or after  
30 January 1, 2003. You may wish to consult a lawyer if you dispute  
31 an assessment.

32  
33 ASSESSMENTS AND ~~NONJUDICIAL~~ FORECLOSURE

34  
35 *Assessments become delinquent 15 days after they are due,*  
36 *unless the governing documents provide for a longer time.* The  
37 failure to pay association assessments may result in the loss of an  
38 owner’s property *through foreclosure. Foreclosure may occur*  
39 *either as a result of a court action, known as judicial foreclosure,*  
40 *or without court action, often referred to as nonjudicial*

foreclosure. *For liens perfected on and after January 1, 2005, an association may not use judicial or nonjudicial foreclosure if the amount of the delinquent assessments or dues, exclusive of any late charges, fees, interest, and costs of collection, is less than two thousand five hundred dollars (\$2,500). For delinquent assessments or dues in excess of two thousand five hundred dollars (\$2,500), an association may use nonjudicial or judicial foreclosure subject to the conditions set forth in Section 1367.4 of the Civil Code.* When using nonjudicial or judicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the lien is not paid. ~~Assessments become delinquent 15 days after they are due, unless the governing documents of the association provide for a longer time.~~ (Sections 1366 and, 1367.1, and 1367.4 of the Civil Code)

In a nonjudicial or judicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. The association may not use nonjudicial or judicial foreclosure to collect fines or penalties, except for costs to repair common areas damaged by a member or a member's guests, if the governing documents provide for this. (Sections 1366 and 1367.1 of the Civil Code)

The association must comply with the requirements of Section 1367.1 of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. (Section 1367.1 of the Civil Code)

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail. Among these documents, the association must send a description of its collection and lien enforcement procedures and the method of calculating the amount. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review the association's records to verify the debt. (Section 1367.1 of the Civil Code)

If a lien is recorded against an owner's property in error, the person who recorded the lien is required to record a lien release

1 within 21 days, and to provide an owner certain documents in this  
2 regard. (Section 1367.1 of the Civil Code)

3 The collection practices of the association may be governed by  
4 state and federal laws regarding fair debt collection. Penalties can  
5 be imposed for debt collection practices that violate these laws.

#### 6 7 PAYMENTS

8  
9 When an owner makes a payment, he or she may request a  
10 receipt, and the association is required to provide it. On the receipt,  
11 the association must indicate the date of payment and the person  
12 who received it. The association must inform owners of a mailing  
13 address for overnight payments. ~~(Sections 1367.1 and (Section~~  
14 ~~1367.1 of the Civil Code)~~

15 ~~An owner may dispute an assessment debt by giving the board~~  
16 ~~of the association a written explanation, and the board must~~  
17 ~~respond within 15 days if certain conditions are met. An owner~~  
18 ~~may pay assessments that are in dispute in full under protest, and~~  
19 ~~then request alternative dispute resolution. (Sections 1366.3 and~~  
20 ~~1367.1 of the Civil Code)~~

21 An owner is not liable for charges, interest, and costs of  
22 collection, if it is established that the assessment was paid properly  
23 on time. (Section 1367.1 of the Civil Code)

#### 24 25 MEETINGS AND PAYMENT PLANS

26  
27 An owner of a separate interest that is not a time-share may  
28 request the association to consider a payment plan to satisfy a  
29 delinquent assessment. The association must inform owners of the  
30 standards for payment plans, if any exist. (Section 1367.1 of the  
31 Civil Code)

32 The board of the directors must meet with an owner who makes  
33 a proper written request for a meeting to discuss a payment plan  
34 when the owner has received a notice of a delinquent assessment.  
35 These payment plans must conform with the payment plan  
36 standards of the association, if they exist. (Section 1367.1 of the  
37 Civil Code)”

38 *SEC. 3.7. Section 1365.1 of the Civil Code is amended to*  
39 *read:*

1365.1. (a) The association shall distribute the written notice described in subdivision (b) to each member of the association during the 60-day period immediately preceding the beginning of the association's fiscal year. The notice shall be printed in at least 12-point type. An association distributing the notice to an owner of an interest that is described in Section ~~11003.5~~ 11212 of the Business and Professions Code *that is not otherwise exempt from this section pursuant to subdivision (a) of Section 11211.7*, may delete from the notice described in subdivision (b) the portion regarding meetings and payment plans.

(b) The notice required by this section shall read as follows:

“NOTICE

ASSESSMENTS AND FORECLOSURE

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

ASSESSMENTS AND ~~NONJUDICIAL~~ FORECLOSURE

*Assessments become delinquent 15 days after they are due, unless the governing documents provide for a longer time. The failure to pay association assessments may result in the loss of an owner's property through foreclosure. Foreclosure may occur either as a result of a court action, known as judicial foreclosure, or without court action, often referred to as nonjudicial foreclosure. ~~When using nonjudicial~~ For liens perfected on and after January 1, 2005, an association may not use judicial or nonjudicial foreclosure if the amount of the delinquent assessments or dues, exclusive of any late charges, fees, interest, and costs of collection, is less than two thousand five hundred dollars (\$2,500). For delinquent assessments or dues in excess of two thousand five hundred dollars (\$2,500), an association may use nonjudicial or judicial foreclosure subject to the conditions set*



1 *forth in Section 1367.4 of the Civil Code. When using nonjudicial*  
2 *or judicial* foreclosure, the association records a lien on the  
3 owner's property. The owner's property may be sold to satisfy the  
4 lien if the lien is not paid. ~~Assessments become delinquent 15 days~~  
5 ~~after they are due, unless the governing documents of the~~  
6 ~~association provide for a longer time.~~ (Sections 1366 and, 1367.1,  
7 and 1367.4 of the Civil Code)

8 In a nonjudicial *or judicial* foreclosure, the association may  
9 recover assessments, reasonable costs of collection, reasonable  
10 attorney's fees, late charges, and interest. The association may not  
11 use nonjudicial *or judicial* foreclosure to collect fines or penalties,  
12 except for costs to repair common areas damaged by a member or  
13 a member's guests, if the governing documents provide for this.  
14 (Sections 1366 and 1367.1 of the Civil Code)

15 The association must comply with the requirements of Section  
16 1367.1 of the Civil Code when collecting delinquent assessments.  
17 If the association fails to follow these requirements, it may not  
18 record a lien on the owner's property until it has satisfied those  
19 requirements. Any additional costs that result from satisfying the  
20 requirements are the responsibility of the association. (Section  
21 1367.1 of the Civil Code)

22 At least 30 days prior to recording a lien on an owner's separate  
23 interest, the association must provide the owner of record with  
24 certain documents by certified mail. Among these documents, the  
25 association must send a description of its collection and lien  
26 enforcement procedures and the method of calculating the  
27 amount. It must also provide an itemized statement of the charges  
28 owed by the owner. An owner has a right to review the  
29 association's records to verify the debt. (Section 1367.1 of the  
30 Civil Code)

31 If a lien is recorded against an owner's property in error, the  
32 person who recorded the lien is required to record a lien release  
33 within 21 days, and to provide an owner certain documents in this  
34 regard. (Section 1367.1 of the Civil Code)

35 The collection practices of the association may be governed by  
36 state and federal laws regarding fair debt collection. Penalties can  
37 be imposed for debt collection practices that violate these laws.

#### 38 39 PAYMENTS 40

1 When an owner makes a payment, he or she may request a  
2 receipt, and the association is required to provide it. On the receipt,  
3 the association must indicate the date of payment and the person  
4 who received it. The association must inform owners of a mailing  
5 address for overnight payments. ~~(Sections 1367.1 and (Section~~  
6 ~~1367.1 of the Civil Code)~~

7 An owner may dispute an assessment debt by ~~giving the board~~  
8 ~~of the association a written explanation, and the board must~~  
9 ~~respond within 15 days if certain conditions are met. An owner~~  
10 ~~may pay assessments that are in dispute in full under protest, and~~  
11 ~~then request alternative dispute resolution. (Sections 1366.3 and~~  
12 ~~1367.1 of the Civil Code)~~ *submitting a written request for dispute*  
13 *resolution to the association as set forth in Article 5 (commencing*  
14 *with Section 1368.810) of Chapter 4 of Title 6 of Division 2 of the*  
15 *Civil Code. In addition, an association may not record a lien or*  
16 *initiate a foreclosure without participating in alternative dispute*  
17 *resolution with a neutral third party as set forth in Article 2*  
18 *(commencing with Section 1369.510) of Chapter 7 of Title 6 of*  
19 *Division 2 of the Civil Code, if so requested by the owner.*

20 An owner is not liable for charges, interest, and costs of  
21 collection, if it is established that the assessment was paid properly  
22 on time. (Section 1367.1 of the Civil Code)

#### 23 24 MEETINGS AND PAYMENT PLANS

25  
26 An owner of a separate interest that is not a time-share may  
27 request the association to consider a payment plan to satisfy a  
28 delinquent assessment. The association must inform owners of the  
29 standards for payment plans, if any exist. (Section 1367.1 of the  
30 Civil Code)

31 The board of the directors must meet with an owner who makes  
32 a proper written request for a meeting to discuss a payment plan  
33 when the owner has received a notice of a delinquent assessment.  
34 These payment plans must conform with the payment plan  
35 standards of the association, if they exist. (Section 1367.1 of the  
36 Civil Code)”

37 SEC. 4. Section 1365.2 of the Civil Code is amended to read:

38 1365.2. (a) (1) The association shall make available for  
39 inspection and copying by a member of the association, or the  
40 member’s designated representative, as provided by this section,

1 all association records, including, but not limited to, accounting  
2 books and records, agendas and minutes of meetings of the  
3 governing board of the association, and agendas and minutes of  
4 meetings of association committees. The provisions of the section  
5 shall apply to any community service organization or similar  
6 entity, as defined in paragraph (3) of subdivision (c) of Section  
7 1368, that is related to the association, and ~~the~~ *this* section shall  
8 operate to give a member of the community service organization  
9 or similar entity a right to inspect and copy the records of that  
10 organization or entity equivalent to that granted to association  
11 members by this section.

12 (2) A member of the association may designate another person  
13 to inspect and copy the association records on the member's  
14 behalf. The member shall make this designation in writing.

15 (b) (1) The association shall make the association records  
16 available for inspection and copying in the association's business  
17 office within the common interest development.

18 (2) If the association does not have a business office within the  
19 development, the association shall make the association records  
20 available for inspection and copying at a place that the requesting  
21 member and the association agree upon.

22 (3) If the association and the requesting member cannot agree  
23 upon a place for inspection and copying pursuant to paragraph (2),  
24 or if the requesting member submits a written request directly to  
25 the association for copies, the association may satisfy the  
26 requirement to make the association records available for  
27 inspection and copying by mailing copies of the requested records  
28 to the member by first-class mail within 10 days of receiving the  
29 member's request. The association may bill the requesting  
30 member for its actual, reasonable costs for copying and mailing  
31 requested documents. The association shall inform the member of  
32 the amount of the copying and mailing costs before sending the  
33 requested documents.

34 (c) (1) Except as provided in paragraph (2), the association  
35 may withhold or redact information from the association records  
36 for any of the following reasons:

37 (A) The release of the information is reasonably likely to lead  
38 to identity theft. For the purposes of this section, "identity theft"  
39 means the unauthorized use of another person's personal



1 identifying information to obtain credit, goods, services, money,  
2 or property.

3 (B) The release of the information is reasonably likely to lead  
4 to fraud in connection with the association.

5 (C) The information is privileged under law.

6 (2) Except as provided by the attorney-client privilege, the  
7 association may not withhold or redact information concerning the  
8 compensation paid to employees, vendors, or contractors.  
9 Compensation information for individual employees shall be set  
10 forth by job classification or title, not by the employee's name,  
11 social security number, or other personal information.

12 (d) (1) The association records and any information from  
13 them, may not be sold, used for a commercial purpose, or used for  
14 any other purpose not reasonably related to a member's interest as  
15 a member. An association may bring an action against any person  
16 who violates this section for injunctive relief and for actual  
17 damages to the association caused by the violation.

18 (2) This section may not be construed to limit the right of an  
19 association to damages for misuse of information obtained from  
20 the association records pursuant to this section or to limit the right  
21 of an association to injunctive relief to stop the misuse of this  
22 information.

23 (3) An association shall be entitled to recover reasonable costs  
24 and expenses, including reasonable attorney's fees, in a successful  
25 action to enforce its rights under this section.

26 (e) A member of an association may bring an action to enforce  
27 the member's right to inspect and copy the association records. If  
28 a court finds that the association unreasonably withheld access to  
29 the association records , the court shall award the member  
30 reasonable costs and expenses, including reasonable attorney's  
31 fees, and may assess a civil penalty of up to five hundred dollars  
32 (\$500) for each violation.

33 (f) For the purposes of this section "association records"  
34 includes, but is not limited to, signed contracts to which the  
35 association is or has been a party or where association assessments  
36 provide payment for services, invoices, receipts, check registers,  
37 canceled checks, purchase orders, accounting statements, bank  
38 statements, any document that can be used to verify any financial  
39 report issued by the association or its auditor, and common area  
40 maintenance records.

(g) The association may charge a fee to the requesting member, which fee shall not exceed the association's reasonable cost to copy the requested records of the association.

SEC. 5. Section 1366.3 of the Civil Code is repealed.

SEC. 6. Section 1367.1 of the Civil Code is amended to read:

1367.1. (a) A regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorney's fees, if any, and interest, if any, as determined in accordance with Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. At least 30 days prior to recording a lien upon the separate interest of the owner of record to collect a debt that is past due under this subdivision, the association shall notify the owner of record in writing by certified mail of the following:

(1) A general description of the collection and lien enforcement procedures of the association and the method of calculation of the amount, a statement that the owner of the separate interest has the right to inspect the association records, pursuant to Section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."

(2) An itemized statement of the charges owed by the owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney's fees, any late charges, and interest, if any.

(3) A statement that the owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the association.

(4) The right to request a meeting with the board as provided by subdivision (c).

(b) Any payments made by the owner of a separate interest toward the debt set forth, as required in subdivision (a), shall first be applied to the assessments owed, and, only after the assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney's fees, late charges, or interest. When an owner makes a payment, the owner may request a receipt and

1 the association shall provide it. The receipt shall indicate the date  
2 of payment and the person who received it. The association shall  
3 provide a mailing address for overnight payment of assessments.

4 (c) An owner, other than an owner of any interest that is  
5 described in Section 11003.5 of the Business and Professions  
6 Code, may submit a written request to meet with the board to  
7 discuss a payment plan for the debt noticed pursuant to subdivision  
8 (a). The association shall provide the owners the standards for  
9 payment plans, if any exist. The board shall meet with the owner  
10 in executive session within 45 days of the postmark of the request,  
11 if the request is mailed within 15 days of the date of the postmark  
12 of the notice, unless there is no regularly scheduled board meeting  
13 within that period, in which case the board may designate a  
14 committee of one or more members to meet with the owner.

15 (d) The amount of the assessment, plus any costs of collection,  
16 late charges, and interest assessed in accordance with Section  
17 1366, shall be a lien on the owner's interest in the common interest  
18 development from and after the time the association causes to be  
19 recorded with the county recorder of the county in which the  
20 separate interest is located, a notice of delinquent assessment,  
21 which shall state the amount of the assessment and other sums  
22 imposed in accordance with Section 1366, a legal description of  
23 the owner's interest in the common interest development against  
24 which the assessment and other sums are levied, the name of the  
25 record owner of the owner's interest in the common interest  
26 development against which the lien is imposed. In order for the  
27 lien to be enforced by nonjudicial foreclosure as provided in  
28 subdivision (g), the notice of delinquent assessment shall state the  
29 name and address of the trustee authorized by the association to  
30 enforce the lien by sale. The notice of delinquent assessment shall  
31 be signed by the person designated in the declaration or by the  
32 association for that purpose, or if no one is designated, by the  
33 president of the association, and mailed in the manner set forth in  
34 Section 2924b, to all record owners of the owner's interest in the  
35 common interest development no later than 10 calendar days after  
36 recordation. Within 21 days of the payment of the sums specified  
37 in the notice of delinquent assessment, the association shall record  
38 or cause to be recorded in the office of the county recorder in which  
39 the notice of delinquent assessment is recorded a lien release or  
40 notice of rescission and provide the owner of the separate interest

1 a copy of the lien release or notice that the delinquent assessment  
2 has been satisfied. A monetary charge imposed by the association  
3 as a means of reimbursing the association for costs incurred by the  
4 association in the repair of damage to common areas and facilities  
5 for which the member or the member's guests or tenants were  
6 responsible may become a lien against the member's separate  
7 interest enforceable by the sale of the interest under Sections 2924,  
8 2924b, and 2924c, provided the authority to impose a lien is set  
9 forth in the governing documents. It is the intent of the Legislature  
10 not to contravene Section 2792.26 of Title 10 of the California  
11 Code of Regulations, as that section appeared on January 1, 1996,  
12 for associations of subdivisions that are being sold under authority  
13 of a subdivision public report, pursuant to Part 2 (commencing  
14 with Section 11000) of Division 4 of the Business and Professions  
15 Code.

16 (e) Except as indicated in subdivision (d), a monetary penalty  
17 imposed by the association as a disciplinary measure for failure of  
18 a member to comply with the governing instruments, except for  
19 the late payments, may not be characterized nor treated in the  
20 governing instruments as an assessment that may become a lien  
21 against the member's subdivision separate interest enforceable by  
22 the sale of the interest under Sections 2924, 2924b, and 2924c.

23 (f) A lien created pursuant to subdivision (d) shall be prior to  
24 all other liens recorded subsequent to the notice of assessment,  
25 except that the declaration may provide for the subordination  
26 thereof to any other liens and encumbrances.

27 (g) An association may not voluntarily assign or pledge the  
28 association's right to collect payments or assessments, or to  
29 enforce or foreclose a lien to a third party, except when the  
30 assignment or pledge is made to a financial institution or lender  
31 chartered or licensed under federal or state law, when acting within  
32 the scope of that charter or license, as security for a loan obtained  
33 by the association; however, the foregoing provision may not  
34 restrict the right or ability of an association to assign any unpaid  
35 obligations of a former member to a third party for purposes of  
36 collection. Subject to the limitations of this subdivision, after the  
37 expiration of 30 days following the recording of a lien created  
38 pursuant to subdivision (d), the lien may be enforced in any  
39 manner permitted by law, including sale by the court, sale by the  
40 trustee designated in the notice of delinquent assessment, or sale



1 by a trustee substituted pursuant to Section 2934a. Any sale by the  
2 trustee shall be conducted in accordance with Sections 2924,  
3 2924b, and 2924c applicable to the exercise of powers of sale in  
4 mortgages and deeds of ~~trusts~~ *trust*. The fees of a trustee may not  
5 exceed the amounts prescribed in Sections 2924c and 2924d.

6 (h) Nothing in this section or in subdivision (a) of Section 726  
7 of the Code of Civil Procedure prohibits actions against the owner  
8 of a separate interest to recover sums for which a lien is created  
9 pursuant to this section or prohibits an association from taking a  
10 deed in lieu of foreclosure.

11 (i) If it is determined that a lien previously recorded against the  
12 separate interest was recorded in error, the party who recorded the  
13 lien shall, within 21 calendar days, record or cause to be recorded  
14 in the office of the county recorder in which the notice of  
15 delinquent assessment is recorded a lien release or notice of  
16 rescission and provide the owner of the separate interest with a  
17 declaration that the lien filing or recording was in error and a copy  
18 of the lien release or notice of rescission.

19 (j) (1) An association that fails to comply with the procedures  
20 set forth in this section shall, prior to recording a lien, recommence  
21 the required notice process.

22 (2) Any costs associated with recommencing the notice process  
23 shall be borne by the association and not by the owner of a separate  
24 interest.

25 (k) This section only applies to liens recorded on or after  
26 January 1, 2003.

27 (l) This section is subordinate to, and shall be interpreted in  
28 conformity with, Section 1367.4.

29 SEC. 6.5. Section 1367.1 of the Civil Code is amended to  
30 read:

31 1367.1. (a) A regular or special assessment and any late  
32 charges, reasonable fees and costs of collection, reasonable  
33 attorney's fees, if any, and interest, if any, as determined in  
34 accordance with Section 1366, shall be a debt of the owner of the  
35 separate interest at the time the assessment or other sums are  
36 levied. At least 30 days prior to recording a lien upon the separate  
37 interest of the owner of record to collect a debt that is past due  
38 under this subdivision, the association shall notify the owner of  
39 record in writing by certified mail of the following:

(1) A general description of the collection and lien enforcement procedures of the association and the method of calculation of the amount, a statement that the owner of the separate interest has the right to inspect the association records, pursuant to Section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: “IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION.”

(2) An itemized statement of the charges owed by the owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney’s fees, any late charges, and interest, if any.

(3) A statement that the owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the association.

(4) The right to request a meeting with the board as provided by subdivision (c).

(5) The right to dispute the assessment debt by submitting a written request for dispute resolution to the association pursuant to Article 5 (commencing with Section 1363.810) of Chapter 4 of Title 6 of Part 4 of Division 2 of the Civil Code.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Section 1369.510) of Chapter 7 of Part 4 of Division 2 of the Civil Code before the association may record a lien or initiate foreclosure against the owner’s separate interest.

(b) Any payments made by the owner of a separate interest toward the debt set forth, as required in subdivision (a), shall first be applied to the assessments owed, and, only after the assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney’s fees, late charges, or interest. When an owner makes a payment, the owner may request a receipt and the association shall provide it. The receipt shall indicate the date of payment and the person who received it. The association shall provide a mailing address for overnight payment of assessments.

(c) (1) Prior to recording a lien or initiating a foreclosure for delinquent assessments, an association shall participate in dispute

1 resolution pursuant to Article 5 (commencing with Section  
2 1363.810) of Chapter 4 of Title 6 of Part 4 of Division 2 of the Civil  
3 Code or alternative dispute resolution with a neutral third party  
4 pursuant to Article 2 (commencing with Section 1369.510) of  
5 Chapter 7 of Title 6 of Part 4 of Division 2 of the Civil Code if so  
6 requested by the owner.

7 (2) An owner, other than an owner of any interest that is  
8 described in Section 11003.5 of the Business and Professions  
9 Code, may submit a written request to meet with the board to  
10 discuss a payment plan for the debt noticed pursuant to subdivision  
11 (a). The association shall provide the owners the standards for  
12 payment plans, if any exist. The board shall meet with the owner  
13 in executive session within 45 days of the postmark of the request,  
14 if the request is mailed within 15 days of the date of the postmark  
15 of the notice, unless there is no regularly scheduled board meeting  
16 within that period, in which case the board may designate a  
17 committee of one or more members to meet with the owner.

18 (d) The amount of the assessment, plus any costs of collection,  
19 late charges, and interest assessed in accordance with Section  
20 1366, shall be a lien on the owner's interest in the common interest  
21 development from and after the time the association causes to be  
22 recorded with the county recorder of the county in which the  
23 separate interest is located, a notice of delinquent assessment,  
24 which shall state the amount of the assessment and other sums  
25 imposed in accordance with Section 1366, a legal description of  
26 the owner's interest in the common interest development against  
27 which the assessment and other sums are levied, the name of the  
28 record owner of the owner's interest in the common interest  
29 development against which the lien is imposed. In order for the  
30 lien to be enforced by nonjudicial foreclosure as provided in  
31 subdivision (g), the notice of delinquent assessment shall state the  
32 name and address of the trustee authorized by the association to  
33 enforce the lien by sale. The notice of delinquent assessment shall  
34 be signed by the person designated in the declaration or by the  
35 association for that purpose, or if no one is designated, by the  
36 president of the association, and mailed in the manner set forth in  
37 Section 2924b, to all record owners of the owner's interest in the  
38 common interest development no later than 10 calendar days after  
39 recordation. Within 21 days of the payment of the sums specified  
40 in the notice of delinquent assessment, the association shall record

1 or cause to be recorded in the office of the county recorder in which  
2 the notice of delinquent assessment is recorded a lien release or  
3 notice of rescission and provide the owner of the separate interest  
4 a copy of the lien release or notice that the delinquent assessment  
5 has been satisfied. A monetary charge imposed by the association  
6 as a means of reimbursing the association for costs incurred by the  
7 association in the repair of damage to common areas and facilities  
8 for which the member or the member's guests or tenants were  
9 responsible may become a lien against the member's separate  
10 interest enforceable by the sale of the interest under Sections 2924,  
11 2924b, and 2924c, provided the authority to impose a lien is set  
12 forth in the governing documents. It is the intent of the Legislature  
13 not to contravene Section 2792.26 of Title 10 of the California  
14 Code of Regulations, as that section appeared on January 1, 1996,  
15 for associations of subdivisions that are being sold under authority  
16 of a subdivision public report, pursuant to Part 2 (commencing  
17 with Section 11000) of Division 4 of the Business and Professions  
18 Code.

19 (e) Except as indicated in subdivision (d), a monetary penalty  
20 imposed by the association as a disciplinary measure for failure of  
21 a member to comply with the governing instruments, except for  
22 the late payments, may not be characterized nor treated in the  
23 governing instruments as an assessment that may become a lien  
24 against the member's subdivision separate interest enforceable by  
25 the sale of the interest under Sections 2924, 2924b, and 2924c.

26 (f) A lien created pursuant to subdivision (d) shall be prior to  
27 all other liens recorded subsequent to the notice of assessment,  
28 except that the declaration may provide for the subordination  
29 thereof to any other liens and encumbrances.

30 (g) An association may not voluntarily assign or pledge the  
31 association's right to collect payments or assessments, or to  
32 enforce or foreclose a lien to a third party, except when the  
33 assignment or pledge is made to a financial institution or lender  
34 chartered or licensed under federal or state law, when acting within  
35 the scope of that charter or license, as security for a loan obtained  
36 by the association; however, the foregoing provision may not  
37 restrict the right or ability of an association to assign any unpaid  
38 obligations of a former member to a third party for purposes of  
39 collection. Subject to the limitations of this subdivision, after the  
40 expiration of 30 days following the recording of a lien created



pursuant to subdivision (d), the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a. Any sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of ~~trusts~~ trust. The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d.

(h) Nothing in this section or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is created pursuant to this section or prohibits an association from taking a deed in lieu of foreclosure.

(i) If it is determined that a lien previously recorded against the separate interest was recorded in error, the party who recorded the lien shall, within 21 calendar days, record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(j) (1) An association that fails to comply with the procedures set forth in this section shall, prior to recording a lien, recommence the required notice process.

(2) Any costs associated with recommencing the notice process shall be borne by the association and not by the owner of a separate interest.

(k) This section only applies to liens recorded on or after January 1, 2003.

(l) This section is subordinate to, and shall be interpreted in conformity with, Section 1367.4.

*SEC. 6.6. Section 1367.1 of the Civil Code is amended to read:*

1367.1. (a) A regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorney's fees, if any, and interest, if any, as determined in accordance with Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. At least 30 days prior to recording a lien upon the separate interest of the owner of record to collect a debt that is past due

1 under this subdivision, the association shall notify the owner of  
2 record in writing by certified mail of the following:

3 (1) A general description of the collection and lien enforcement  
4 procedures of the association and the method of calculation of the  
5 amount, a statement that the owner of the separate interest has the  
6 right to inspect the association records, pursuant to Section 8333  
7 of the Corporations Code, and the following statement in 14-point  
8 boldface type, if printed, or in capital letters, if typed:  
9 “IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS  
10 PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND  
11 IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT  
12 COURT ACTION”. ACTION.”

13 (2) An itemized statement of the charges owed by the owner,  
14 including items on the statement which indicate the amount of any  
15 delinquent assessments, the fees and reasonable costs of  
16 collection, reasonable attorney’s fees, any late charges, and  
17 interest, if any.

18 (3) A statement that the owner shall not be liable to pay the  
19 charges, interest, and costs of collection, if it is determined the  
20 assessment was paid on time to the association.

21 (4) The right to request a meeting with the board as provided  
22 by subdivision (c).

23 (b) Any payments made by the owner of a separate interest  
24 toward the debt set forth, as required in subdivision (a), shall first  
25 be applied to the assessments owed, and, only after the assessments  
26 owed are paid in full shall the payments be applied to the fees and  
27 costs of collection, attorney’s fees, late charges, or interest. When  
28 an owner makes a payment, the owner may request a receipt and  
29 the association shall provide it. The receipt shall indicate the date  
30 of payment and the person who received it. The association shall  
31 provide a mailing address for overnight payment of assessments.

32 ~~(c) (1) An owner may dispute the debt noticed pursuant to~~  
33 ~~subdivision (a) by submitting to the board a written explanation of~~  
34 ~~the reasons for his or her dispute. The board shall respond in~~  
35 ~~writing to the owner within 15 days of the date of the postmark of~~  
36 ~~the explanation, if the explanation is mailed within 15 days of the~~  
37 ~~postmark of the notice.~~

38 ~~(2) An owner, other than an owner of any interest that is~~  
39 ~~described in Section 11003.5 11212 of the Business and~~  
40 ~~Professions Code that is not otherwise exempt from this section~~

1 *pursuant to subdivision (a) of Section 11211.7*, may submit a  
 2 written request to meet with the board to discuss a payment plan  
 3 for the debt noticed pursuant to subdivision (a). The association  
 4 shall provide the owners the standards for payment plans, if any  
 5 exist. The board shall meet with the owner in executive session  
 6 within 45 days of the postmark of the request, if the request is  
 7 mailed within 15 days of the date of the postmark of the notice,  
 8 unless there is no regularly scheduled board meeting within that  
 9 period, in which case the board may designate a committee of one  
 10 or more members to meet with the owner.

11 (d) The amount of the assessment, plus any costs of collection,  
 12 late charges, and interest assessed in accordance with Section  
 13 1366, shall be a lien on the owner's interest in the common interest  
 14 development from and after the time the association causes to be  
 15 recorded with the county recorder of the county in which the  
 16 separate interest is located, a notice of delinquent assessment,  
 17 which shall state the amount of the assessment and other sums  
 18 imposed in accordance with Section 1366, a legal description of  
 19 the owner's interest in the common interest development against  
 20 which the assessment and other sums are levied, the name of the  
 21 record owner of the owner's interest in the common interest  
 22 development against which the lien is imposed. In order for the  
 23 lien to be enforced by nonjudicial foreclosure as provided in  
 24 subdivision (g), the notice of delinquent assessment shall state the  
 25 name and address of the trustee authorized by the association to  
 26 enforce the lien by sale. The notice of delinquent assessment shall  
 27 be signed by the person designated in the declaration or by the  
 28 association for that purpose, or if no one is designated, by the  
 29 president of the association, and mailed in the manner set forth in  
 30 Section 2924b, to all record owners of the owner's interest in the  
 31 common interest development no later than 10 calendar days after  
 32 recordation. Within 21 days of the payment of the sums specified  
 33 in the notice of delinquent assessment, the association shall record  
 34 or cause to be recorded in the office of the county recorder in which  
 35 the notice of delinquent assessment is recorded a lien release or  
 36 notice of rescission and provide the owner of the separate interest  
 37 a copy of the lien release or notice that the delinquent assessment  
 38 has been satisfied. A monetary charge imposed by the association  
 39 as a means of reimbursing the association for costs incurred by the  
 40 association in the repair of damage to common areas and facilities



1 for which the member or the member's guests or tenants were  
2 responsible may become a lien against the member's separate  
3 interest enforceable by the sale of the interest under Sections 2924,  
4 2924b, and 2924c, provided the authority to impose a lien is set  
5 forth in the governing documents. It is the intent of the Legislature  
6 not to contravene Section 2792.26 of Title 10 of the California  
7 Code of Regulations, as that section appeared on January 1, 1996,  
8 for associations of subdivisions that are being sold under authority  
9 of a subdivision public report, pursuant to Part 2 (commencing  
10 with Section 11000) of Division 4 of the Business and Professions  
11 Code.

12 (e) Except as indicated in subdivision (d), a monetary penalty  
13 imposed by the association as a disciplinary measure for failure of  
14 a member to comply with the governing instruments, except for  
15 the late payments, may not be characterized nor treated in the  
16 governing instruments as an assessment that may become a lien  
17 against the member's subdivision separate interest enforceable by  
18 the sale of the interest under Sections 2924, 2924b, and 2924c.

19 (f) A lien created pursuant to subdivision (d) shall be prior to  
20 all other liens recorded subsequent to the notice of assessment,  
21 except that the declaration may provide for the subordination  
22 thereof to any other liens and encumbrances.

23 (g) An association may not voluntarily assign or pledge the  
24 association's right to collect payments or assessments, or to  
25 enforce or foreclose a lien to a third party, except when the  
26 assignment or pledge is made to a financial institution or lender  
27 chartered or licensed under federal or state law, when acting within  
28 the scope of that charter or license, as security for a loan obtained  
29 by the association; however, the foregoing provision may not  
30 restrict the right or ability of an association to assign any unpaid  
31 obligations of a former member to a third party for purposes of  
32 collection. Subject to the limitations of this subdivision, after the  
33 expiration of 30 days following the recording of a lien created  
34 pursuant to subdivision (d), the lien may be enforced in any  
35 manner permitted by law, including sale by the court, sale by the  
36 trustee designated in the notice of delinquent assessment, or sale  
37 by a trustee substituted pursuant to Section 2934a. Any sale by the  
38 trustee shall be conducted in accordance with Sections 2924,  
39 2924b, and 2924c applicable to the exercise of powers of sale in



1 mortgages and deeds of trusts. The fees of a trustee may not exceed  
2 the amounts prescribed in Sections 2924c and 2924d.

3 (h) Nothing in this section or in subdivision (a) of Section 726  
4 of the Code of Civil Procedure prohibits actions against the owner  
5 of a separate interest to recover sums for which a lien is created  
6 pursuant to this section or prohibits an association from taking a  
7 deed in lieu of foreclosure.

8 (i) If it is determined that a lien previously recorded against the  
9 separate interest was recorded in error, the party who recorded the  
10 lien shall, within 21 calendar days, record or cause to be recorded  
11 in the office of the county recorder in which the notice of  
12 delinquent assessment is recorded a lien release or notice of  
13 rescission and provide the owner of the separate interest with a  
14 declaration that the lien filing or recording was in error and a copy  
15 of the lien release or notice of rescission.

16 (j) (1) An association that fails to comply with the procedures  
17 set forth in this section shall, prior to recording a lien, recommence  
18 the required notice process.

19 (2) Any costs associated with recommencing the notice process  
20 shall be borne by the association and not by the owner of a separate  
21 interest.

22 (k) This section only applies to liens recorded on or after  
23 January 1, 2003.

24 (l) *This section is subordinate to, and shall be interpreted in*  
25 *conformity with, Section 1367.4.*

26 SEC. 6.7. *Section 1367.1 of the Civil Code is amended to*  
27 *read:*

28 1367.1. (a) A regular or special assessment and any late  
29 charges, reasonable fees and costs of collection, reasonable  
30 attorney's fees, if any, and interest, if any, as determined in  
31 accordance with Section 1366, shall be a debt of the owner of the  
32 separate interest at the time the assessment or other sums are  
33 levied. At least 30 days prior to recording a lien upon the separate  
34 interest of the owner of record to collect a debt that is past due  
35 under this subdivision, the association shall notify the owner of  
36 record in writing by certified mail of the following:

37 (1) A general description of the collection and lien enforcement  
38 procedures of the association and the method of calculation of the  
39 amount, a statement that the owner of the separate interest has the  
40 right to inspect the association records, pursuant to Section 8333

1 of the Corporations Code, and the following statement in 14-point  
2 boldface type, if printed, or in capital letters, if typed:  
3 “IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS  
4 PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND  
5 IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT  
6 COURT ACTION”. ACTION.”

7 (2) An itemized statement of the charges owed by the owner,  
8 including items on the statement which indicate the amount of any  
9 delinquent assessments, the fees and reasonable costs of  
10 collection, reasonable attorney’s fees, any late charges, and  
11 interest, if any.

12 (3) A statement that the owner shall not be liable to pay the  
13 charges, interest, and costs of collection, if it is determined the  
14 assessment was paid on time to the association.

15 (4) The right to request a meeting with the board as provided  
16 by subdivision (c).

17 (5) *The right to dispute the assessment debt by submitting a*  
18 *written request for dispute resolution to the association pursuant*  
19 *to Article 5 (commencing with Section 1363.810) of Chapter 4 of*  
20 *Title 6 of Part 4 of Division 2 of the Civil Code.*

21 (6) *The right to request alternative dispute resolution with a*  
22 *neutral third party pursuant to Article 2 (commencing with Section*  
23 *1369.510) of Chapter 7 of Part 4 of Division 2 of the Civil Code*  
24 *before the association may record a lien or initiate foreclosure*  
25 *against the owner’s separate interest.*

26 (b) Any payments made by the owner of a separate interest  
27 toward the debt set forth, as required in subdivision (a), shall first  
28 be applied to the assessments owed, and, only after the assessments  
29 owed are paid in full shall the payments be applied to the fees and  
30 costs of collection, attorney’s fees, late charges, or interest. When  
31 an owner makes a payment, the owner may request a receipt and  
32 the association shall provide it. The receipt shall indicate the date  
33 of payment and the person who received it. The association shall  
34 provide a mailing address for overnight payment of assessments.

35 (c) (1) ~~An owner may dispute the debt noticed pursuant to~~  
36 ~~subdivision (a) by submitting to the board a written explanation of~~  
37 ~~the reasons for his or her dispute. The board shall respond in~~  
38 ~~writing to the owner within 15 days of the date of the postmark of~~  
39 ~~the explanation, if the explanation is mailed within 15 days of the~~  
40 ~~postmark of the notice. Prior to recording a lien or initiating a~~

1 *foreclosure for delinquent assessments, an association shall*  
 2 *participate in dispute resolution pursuant to Article 5*  
 3 *(commencing with Section 1363.810) of Chapter 4 of Title 6 of*  
 4 *Part 4 of Division 2 of the Civil Code or alternative dispute*  
 5 *resolution with a neutral third party pursuant to Article 2*  
 6 *(commencing with Section 1369.510) of Chapter 7 of Title 6 of*  
 7 *Part 4 of Division 2 of the Civil Code if so requested by the owner.*

8 (2) An owner, other than an owner of any interest that is  
 9 described in Section ~~11003.5~~ 11212 of the Business and  
 10 Professions Code *that is not exempt from this section pursuant to*  
 11 *subdivision (a) of Section 11211.7*, may submit a written request  
 12 to meet with the board to discuss a payment plan for the debt  
 13 noticed pursuant to subdivision (a). The association shall provide  
 14 the owners the standards for payment plans, if any exist. The board  
 15 shall meet with the owner in executive session within 45 days of  
 16 the postmark of the request, if the request is mailed within 15 days  
 17 of the date of the postmark of the notice, unless there is no  
 18 regularly scheduled board meeting within that period, in which  
 19 case the board may designate a committee of one or more members  
 20 to meet with the owner.

21 (d) The amount of the assessment, plus any costs of collection,  
 22 late charges, and interest assessed in accordance with Section  
 23 1366, shall be a lien on the owner's interest in the common interest  
 24 development from and after the time the association causes to be  
 25 recorded with the county recorder of the county in which the  
 26 separate interest is located, a notice of delinquent assessment,  
 27 which shall state the amount of the assessment and other sums  
 28 imposed in accordance with Section 1366, a legal description of  
 29 the owner's interest in the common interest development against  
 30 which the assessment and other sums are levied, the name of the  
 31 record owner of the owner's interest in the common interest  
 32 development against which the lien is imposed. In order for the  
 33 lien to be enforced by nonjudicial foreclosure as provided in  
 34 subdivision (g), the notice of delinquent assessment shall state the  
 35 name and address of the trustee authorized by the association to  
 36 enforce the lien by sale. The notice of delinquent assessment shall  
 37 be signed by the person designated in the declaration or by the  
 38 association for that purpose, or if no one is designated, by the  
 39 president of the association, and mailed in the manner set forth in  
 40 Section 2924b, to all record owners of the owner's interest in the

1 common interest development no later than 10 calendar days after  
2 recordation. Within 21 days of the payment of the sums specified  
3 in the notice of delinquent assessment, the association shall record  
4 or cause to be recorded in the office of the county recorder in which  
5 the notice of delinquent assessment is recorded a lien release or  
6 notice of rescission and provide the owner of the separate interest  
7 a copy of the lien release or notice that the delinquent assessment  
8 has been satisfied. A monetary charge imposed by the association  
9 as a means of reimbursing the association for costs incurred by the  
10 association in the repair of damage to common areas and facilities  
11 for which the member or the member's guests or tenants were  
12 responsible may become a lien against the member's separate  
13 interest enforceable by the sale of the interest under Sections 2924,  
14 2924b, and 2924c, provided the authority to impose a lien is set  
15 forth in the governing documents. It is the intent of the Legislature  
16 not to contravene Section 2792.26 of Title 10 of the California  
17 Code of Regulations, as that section appeared on January 1, 1996,  
18 for associations of subdivisions that are being sold under authority  
19 of a subdivision public report, pursuant to Part 2 (commencing  
20 with Section 11000) of Division 4 of the Business and Professions  
21 Code.

22 (e) Except as indicated in subdivision (d), a monetary penalty  
23 imposed by the association as a disciplinary measure for failure of  
24 a member to comply with the governing instruments, except for  
25 the late payments, may not be characterized nor treated in the  
26 governing instruments as an assessment that may become a lien  
27 against the member's subdivision separate interest enforceable by  
28 the sale of the interest under Sections 2924, 2924b, and 2924c.

29 (f) A lien created pursuant to subdivision (d) shall be prior to  
30 all other liens recorded subsequent to the notice of assessment,  
31 except that the declaration may provide for the subordination  
32 thereof to any other liens and encumbrances.

33 (g) An association may not voluntarily assign or pledge the  
34 association's right to collect payments or assessments, or to  
35 enforce or foreclose a lien to a third party, except when the  
36 assignment or pledge is made to a financial institution or lender  
37 chartered or licensed under federal or state law, when acting within  
38 the scope of that charter or license, as security for a loan obtained  
39 by the association; however, the foregoing provision may not  
40 restrict the right or ability of an association to assign any unpaid



obligations of a former member to a third party for purposes of collection. Subject to the limitations of this subdivision, after the expiration of 30 days following the recording of a lien created pursuant to subdivision (d), the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a. Any sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts. The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d.

(h) Nothing in this section or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is created pursuant to this section or prohibits an association from taking a deed in lieu of foreclosure.

(i) If it is determined that a lien previously recorded against the separate interest was recorded in error, the party who recorded the lien shall, within 21 calendar days, record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(j) (1) An association that fails to comply with the procedures set forth in this section shall, prior to recording a lien, recommence the required notice process.

(2) Any costs associated with recommencing the notice process shall be borne by the association and not by the owner of a separate interest.

(k) This section only applies to liens recorded on or after January 1, 2003.

*(l) This section is subordinate to, and shall be interpreted in conformity with, Section 1367.4.*

SEC. 7. Section 1367.4 is added to the Civil Code, to read:

1367.4. (a) Notwithstanding any law or any provisions of the governing documents to the contrary, this section shall apply to debts for assessments that arise on and after January 1, 2005.

(b) An association that seeks to collect a delinquent regular or special assessment of an amount less than two thousand five



1 hundred dollars (\$2,500), not including any late charges, fees and  
2 costs of collection, or interest, may not collect that debt through  
3 nonjudicial or judicial foreclosure, but may attempt to collect that  
4 debt in any of the following ways:

5 (1) By a civil action in small claims court, pursuant to Chapter  
6 5.5 (commencing with Section 116.110) of Title 1 of the Code of  
7 Civil Procedure. An association that chooses to proceed by an  
8 action in small claims court, and prevails, may enforce the  
9 judgment as permitted under Article 8 (commencing with Section  
10 116.810) of Title 1 of the Code of Civil Procedure. The amount that  
11 may be recovered in small claims court to collect upon a debt for  
12 delinquent assessments may not exceed the jurisdictional limits of  
13 the small claims court and shall be the sum of the following:

14 (A) The amount owed as of the date of filing the complaint in  
15 the small claims court proceeding.

16 (B) In the discretion of the court, an additional amount  
17 described in subparagraph (A) equal to the amount owed for the  
18 period from the date the complaint is filed until the estimated date  
19 of judgment.

20 (2) By recording a lien on the owner's separate interest upon  
21 which the association may not foreclose. If requested by the owner  
22 of a separate interest whom the association asserts is delinquent in  
23 paying assessments, an association that chooses to record a lien  
24 under these provisions, prior to recording the lien, shall participate  
25 in dispute resolution as set forth in Article 5 (commencing with  
26 Section 1368.810) of Chapter 4 or alternative dispute resolution as  
27 set forth in Article 2 (commencing with Section 1369.510) of  
28 Chapter 7. This procedure shall apply only if Assembly Bill 1836  
29 of the 2003–04 Regular Session is enacted.

30 (3) Any other manner provided by law, except for nonjudicial  
31 or judicial foreclosure.

32 (c) An association that seeks to collect a delinquent regular or  
33 special assessment of an amount of two thousand five hundred  
34 dollars (\$2,500) or more, not including any late charges, fees and  
35 costs of collection, or interest, may use nonjudicial or judicial  
36 foreclosure subject to the following conditions:

37 (1) The decision to record a lien for a delinquent assessment  
38 shall be made only by the board of directors of the association and  
39 may not be delegated to an agent of the association. The board shall  
40 approve the decision by a majority vote of the board members in



1 an open session. The board shall record the vote in the minutes of  
2 that meeting.

3 (2) If requested by the owner of a separate interest whom the  
4 association asserts is delinquent in paying assessments, prior to  
5 recording any lien on an owner's separate interest, the association  
6 shall participate in dispute resolution as set forth in Article 5  
7 (commencing with Section 1368.810) of Chapter 4 or alternative  
8 dispute resolution as set forth in Article 2 (commencing with  
9 Section 1369.510) of Chapter 7. This procedure shall apply only  
10 if Assembly Bill 1836 of the 2003–04 Regular Session is enacted.

11 (3) The decision to foreclose upon a lien for a delinquent  
12 assessment that has been validly recorded shall be made only by  
13 the board of directors of the association and may not be delegated  
14 to an agent of the association. The board shall approve the decision  
15 by a majority vote of the board members in an executive session.  
16 The board shall record the vote in the minutes of that meeting. The  
17 board shall maintain the confidentiality of the owner or owners of  
18 the separate interest by identifying the matter by the parcel number  
19 of the property, rather than the name of the owner or owners.

20 (4) The board shall provide personal notice to an owner of a  
21 separate interest who occupies the separate interest if the board  
22 votes to foreclose upon the separate interest. The board shall  
23 provide written notice to an owner of a separate interest who does  
24 not occupy the separate interest by first-class mail, postage  
25 prepaid, at the most current address shown on the books of the  
26 association.

27 (5) A nonjudicial foreclosure by an association to collect upon  
28 a debt for delinquent assessments shall be subject to a right of  
29 redemption. The redemption period within which the separate  
30 interest may be redeemed from a foreclosure sale under this  
31 paragraph ends 90 days after the sale.

32 (6) A nonjudicial or judicial foreclosure by an association to  
33 collect upon a debt for delinquent assessments shall comply with  
34 the following requirements, *provided that an uncollected*  
35 *judgment may be aggregated with other delinquent assessments on*  
36 *a separate interest and shall count to meet the two thousand five*  
37 *hundred dollar (\$2,500) threshold:*

38 (A) The minimum bid shall be at least ~~90~~ 65 percent of the  
39 appraised value, excluding any senior liens subject to which the  
40 successful bidder would be taking title.

(B) An appraiser appropriately certified by the Office of Real Estate Appraisers shall perform the exterior appraisal (using Form 2055 Exterior Only Appraisal). The cost of the appraisal shall be recouped at sale if the property is auctioned or at cure of the default prior to sale.

(d) This section does not apply to the debts of owners of separate interests in time-share projects, as defined in Section 11003.5 of the Business and Professions Code, or to the debts of developers.

SEC. 8. Section 116.540 of the Code of Civil Procedure is amended to read:

116.540. (a) Except as permitted by this section, no individual other than the plaintiff and the defendant may take part in the conduct or defense of a small claims action.

(b) A corporation may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, who is employed, appointed, or elected for purposes other than solely representing the corporation in small claims court.

(c) A party who is not a corporation or a natural person may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, or in the case of a partnership, a partner, engaged for purposes other than solely representing the party in small claims court.

(d) If a party is an individual doing business as a sole proprietorship, the party may appear and participate in a small claims action by a representative and without personally appearing if both of the following conditions are met:

(1) The claim can be proved or disputed by evidence of an account that constitutes a business record as defined in Section 1271 of the Evidence Code, and there is no other issue of fact in the case.

(2) The representative is a regular employee of the party for purposes other than solely representing the party in small claims actions and is qualified to testify to the identity and mode of preparation of the business record.

(e) A plaintiff is not required to personally appear, and may submit declarations to serve as evidence supporting his or her claim or allow another individual to appear and participate on his

1 or her behalf, if (1) the plaintiff is serving on active duty in the  
2 United States Armed Forces outside this state, (2) the plaintiff was  
3 assigned to his or her duty station after his or her claim arose, (3)  
4 the assignment is for more than six months, (4) the representative  
5 is serving without compensation, and (5) the representative has  
6 appeared in small claims actions on behalf of others no more than  
7 four times during the calendar year. The defendant may file a claim  
8 in the same action in an amount not to exceed the jurisdictional  
9 limits stated in Sections 116.220 and 116.231.

10 (f) A party incarcerated in a county jail, a Department of  
11 Corrections facility, or a Youth Authority facility is not required  
12 to personally appear, and may submit declarations to serve as  
13 evidence supporting his or her claim, or may authorize another  
14 individual to appear and participate on his or her behalf if that  
15 individual is serving without compensation and has appeared in  
16 small claims actions on behalf of others no more than four times  
17 during the calendar year.

18 (g) A defendant who is a nonresident owner of real property  
19 may defend against a claim relating to that property without  
20 personally appearing by (1) submitting written declarations to  
21 serve as evidence supporting his or her defense, (2) allowing  
22 another individual to appear and participate on his or her behalf if  
23 that individual is serving without compensation and has appeared  
24 in small claims actions on behalf of others no more than four times  
25 during the calendar year, or (3) taking the action described in both  
26 (1) and (2).

27 (h) A party who is an owner of rental real property may appear  
28 and participate in a small claims action through a property agent  
29 under contract with the owner to manage the rental of that  
30 property, if (1) the owner has retained the property agent  
31 principally to manage the rental of that property and not  
32 principally to represent the owner in small claims court, and (2) the  
33 claim relates to the rental property.

34 (i) A party who is a homeowner's association of a common  
35 interest development may appear and participate in a small claims  
36 action through a management company representative or  
37 bookkeeper who appears on behalf of that homeowner's  
38 association.

39 (j) At the hearing of a small claims action, the court shall  
40 require any individual who is appearing as a representative of a



1 party under subdivisions (b) to (i), inclusive, to file a declaration  
2 stating (1) that the individual is authorized to appear for the party,  
3 and (2) the basis for that authorization. If the representative is  
4 appearing under subdivision (b), (c), (d), or (i), the declaration also  
5 shall state that the individual is not employed solely to represent  
6 the party in small claims court. If the representative is appearing  
7 under subdivision (e), (f), or (g), the declaration also shall state that  
8 the representative is serving without compensation, and has  
9 appeared in small claims actions on behalf of others no more than  
10 four times during the calendar year.

11 (k) A husband or wife who sues or who is sued with his or her  
12 spouse may appear and participate on behalf of his or her spouse  
13 if (1) the claim is a joint claim, (2) the represented spouse has given  
14 his or her consent, and (3) the court determines that the interests  
15 of justice would be served.

16 (l) If the court determines that a party cannot properly present  
17 his or her claim or defense and needs assistance, the court may in  
18 its discretion allow another individual to assist that party.

19 (m) Nothing in this section shall operate or be construed to  
20 authorize an attorney to participate in a small claims action except  
21 as expressly provided in Section 116.530.

22 SEC. 9. Section 729.035 is added to the Code of Civil  
23 Procedure, to read:

24 729.035. Notwithstanding any provision of law to the  
25 contrary, the sale of a separate interest in a common interest  
26 development is subject to the right of redemption within 90 days  
27 after the sale if the sale arises from a foreclosure by the association  
28 of a common interest development pursuant to subdivision (g) of  
29 Section 1367.1 of the Civil Code, subject to the conditions of  
30 Section 1367.4 of the Civil Code.

31 ~~SEC. 10.—Section 3.5 of this bill incorporates amendments to~~  
32 ~~Section 1365.1 of the Civil Code to reference new provisions of~~  
33 ~~the Civil Code, as added by Assembly Bill 1836. It shall only~~  
34 ~~become operative if both bills are enacted and become effective on~~  
35 ~~or before January 1, 2005, in which event Section 3 of this bill shall~~  
36 ~~not become operative.~~

37 ~~SEC. 11.—Section 6.5 of this bill incorporates amendments to~~  
38 ~~Section 1367.1 of the Civil Code to reference new provisions of~~  
39 ~~the Civil Code, as added by Assembly Bill 1836. It shall only~~  
40 ~~become operative if both bills are enacted and become effective on~~

1 ~~or before January 1, 2005, in which event Section 6 of this bill shall~~  
2 ~~not become operative.~~

3 ~~SEC. 12.~~

4 *SEC. 10. Section 3.5 of this bill incorporates amendments to*  
5 *Section 1365.1 of the Civil Code to reference new provisions of the*  
6 *Civil Code, as added by AB 1836, but not the changes to Section*  
7 *1365.1 proposed by AB 2252. It shall only become operative if both*  
8 *this bill and AB 1836 are enacted and become effective on or before*  
9 *January 1, 2005, and AB 2252 is not enacted, in which event*  
10 *Sections 3, 3.6, and 3.7 of this bill shall not become operative.*

11 *SEC. 11. Section 3.6 of this bill incorporates amendments to*  
12 *Section 1365.1 of the Civil Code proposed by this bill and AB 2252,*  
13 *but does not incorporate amendments to Section 1365.1 to*  
14 *reference new provisions of the Civil Code, as added by AB 1836.*  
15 *It shall only become operative if both this bill and AB 2252 are*  
16 *enacted and become effective on or before January 1, 2005, and*  
17 *AB 1836 is not enacted, in which event Sections 3, 3.5, and 3.7*  
18 *shall not become operative.*

19 *SEC. 12. Section 3.7 of this bill incorporates amendments to*  
20 *Section 1365.1 of the Civil Code to reference new provisions of the*  
21 *Civil Code, as added by AB 1836, and the changes to Section*  
22 *1365.1 proposed by AB 2252. It shall only become operative if all*  
23 *three bills are enacted and become effective on or before January*  
24 *1, 2005, in which event Sections 3, 3.5, and 3.6 of this bill shall not*  
25 *become operative.*

26 *SEC. 13. Section 6.5 of this bill incorporates amendments to*  
27 *Section 1367.1 of the Civil Code to reference new provisions of the*  
28 *Civil Code, as added by AB 1836, but not the changes to Section*  
29 *1367.1 proposed by AB 2252. It shall only become operative if both*  
30 *this bill and AB 1836 are enacted and become effective on or before*  
31 *January 1, 2005, and AB 2252 is not enacted, in which event*  
32 *Sections 6, 6.6, and 6.7 of this bill shall not become operative.*

33 *SEC. 14. Section 6.6 of this bill incorporates amendments to*  
34 *Section 1367.1 of the Civil Code proposed by this bill and AB 2252,*  
35 *but does not incorporate amendments to Section 1365.1 to*  
36 *reference new provisions of the Civil Code, as added by AB 1836.*  
37 *It shall only become operative if both this bill and AB 2252 are*  
38 *enacted and become effective on or before January 1, 2005, and*  
39 *AB 1836 is not enacted, in which event Sections 6, 6.5, and 6.7*  
40 *shall not become operative.*

1     *SEC. 15. Section 6.7 of this bill incorporates amendments to*  
2     *Section 1365.1 of the Civil Code to reference new provisions of the*  
3     *Civil Code, as added by AB 1836, and the changes to Section*  
4     *1365.1 proposed by AB 2252. It shall only become operative if all*  
5     *three bills are enacted and become effective on or before January*  
6     *1, 2005, in which event Sections 6, 6.5, and 6.6 of this bill shall not*  
7     *become operative.*

8     *SEC. 16. This act shall become operative only if Assembly*  
9     *Bill 2598 of the 2003–04 Regular Session is enacted.*

